



U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D. C. 20536



Public Copy

FILE: [REDACTED]

Office: Miami

Date:

MAR 31 2000

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

IN BEHALF OF APPLICANT: Self-represented

Denying access to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Miami, Florida, who certified his decision to the Associate Commissioner, Examinations, for review. The district director's decision will be affirmed.

The applicant is a native and citizen of Cuba who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act of November 2, 1966. This Act provides for the adjustment of status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959, and has been physically present in the United States for at least one year, to that of an alien lawfully admitted for permanent residence if the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

The district director found the applicant inadmissible to the United States because he falls within the purview of section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(I). The district director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application.

The applicant has provided no statement or additional evidence on notice of certification.

Section 212(a)(2) of the Act provides that aliens inadmissible and ineligible to receive visas and ineligible to be admitted to the United States include:

(A)(i) Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of --

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or

The record reflects the following:

1. On May 18, 1998, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. [REDACTED], the applicant was indicted for Count 1, burglary with assault or battery therein while armed; Count 2, attempted second degree murder with a weapon; and Count 3, robbery using a deadly weapon or firearm. On January 26, 2000, the applicant was adjudged guilty of Counts 1, 2, and 3, and he was sentenced to imprisonment for a term of 5 years concurrent as to each count, and concurrent with sentence imposed in Case No. [REDACTED] (paragraph 2 below).

2. On October 2, 1995, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. [REDACTED], the applicant was indicted for grand theft. He was subsequently found guilty of the crime and placed on probation. Because he violated the terms of his probation, on January 26, 2000, his probation was revoked, the applicant was adjudged guilty of the crime, and he was sentenced to imprisonment for a term of 5 years.

The records of the Federal Bureau of Investigation further reflects the following arrests regarding the applicant. The final court disposition, however, is not contained in the record of proceeding:

3. Arrested on January 29, 1995 for shoplifting.
4. Arrested on January 28, 1996 for vehicle theft and grand larceny.
5. Arrested on May 14, 1996 for shoplifting/petit theft.
6. Arrested on June 9, 1996 for burglary-occupied; property damage/criminal mischief; resisting officer without violence.
7. Arrested on June 12, 1996 for possession of burglary tools.
8. Arrested on September 25, 1996 for possession of burglary tools.
9. Arrested on April 7, 1997 for grand larceny.
10. Arrested on April 13, 1998 for resisting officer/fail to sign summons.

Burglary with assault or battery therein while armed (burglary of a dwelling with intent to commit a crime therein while armed with a deadly weapon) is a crime involving moral turpitude (CIMT). Matter of Garcia-Garrocho, 19 I&N Dec. 423 (BIA 1986); DeBernardo v. Rogers, 254 F.2d 81 (D.C. Cir. 1958); Matter of Leyva, 16 I&N Dec. 118 (BIA 1977); Matter of Frentescu, 18 I&N Dec. 244, 245 (BIA 1982). The indictment report in the instant case shows that the applicant did unlawfully enter or remain in a dwelling without the consent of the owner or custodian, having an intent to commit robbery and/or theft and in the course of committing said burglary, the defendant made an assault or battery upon the victim by pointing a gun at the victim and/or firing a gun within the residence. Robbery is a CIMT. Matter of Martin, 18 I&N Dec. 226 (BIA 1982); Matter of Romandia-Herrerros, 11 I&N Dec. 772 (BIA 1966); Matter of Carballe, 19 I&N Dec. 357 (BIA 1986). Theft, whether grand or petty, is also a CIMT. Matter of Scarpulla, 15 I&N Dec. 139 (BIA 1974); Morasch v. INS, 363 F.2d 30 (9th Cir.

1966). Likewise, attempted murder is a CIMT. Matter of Awaijane, 14 I&N Dec. 117 (BIA 1972).

The applicant is, therefore, inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act based on his convictions of crimes involving moral turpitude.

The applicant is ineligible for adjustment of status to permanent resident pursuant to section 1 of the Act of November 2, 1966. The decision of the district director to deny the application will be affirmed.

ORDER: The district director's decision is affirmed.